

### **REMARKS/ARGUMENTS**

In response to the Office Action mailed December 28, 2004, Applicants amend their application and request reconsideration in view of the amendments and the following remarks. In this amendment Claim 1 is amended, no claims are cancelled without prejudice and no claims are added so that claims 1 and 3-5 are currently pending. No new matter has been introduced.

Claims 1 and 3-5 were rejected as anticipated by U.S. Patent Number 6,193,745 to Fogarty et al. (Fogarty). This rejection is respectfully traversed.

Fogarty provides modular intraluminal tubular prostheses, particularly stents and stent-grafts, for the treatment of disease conditions, particularly aneurysms. Modular sections of the prostheses, or "prosthetic modules," may be selectively combined to form a composite prosthesis having characteristics which are tailored to the specific requirements of the patient. Each prosthetic module preferably includes one or more standard interface ends for engaging another module, the module/module interface typically comprising ends which overlap and/or lock within a predetermined axial range. Advantageously, the axial length, cross-section, perimeter, resilient expansive force, axial flexibility, liner permeability, liner extensibility, radial conformability, liner/tubal wall sealing and anchoring, and other prosthetic characteristics may be varied along the axis of the composite prosthesis, and also along the axis of each prosthetic module. The modules are preferably individually introduced into a lumen system of a patient body so that the composite prosthesis is assembled in situ. Ideally, selection of appropriate prosthetic modules and the flexibility of the interface overlap range provides a custom fit intraluminal prosthesis which provides a therapy tailored to the individual patient's needs.

As the Examiner asserts, the device of Fogarty comprises a radially expandable stent having proximal and distal open ends and a longitudinal axis therebetween, the stent comprising a plurality of hoops comprising a plurality of interconnected struts forming a substantially diamond shaped pattern, the stent having a proximal and a distal hoop, and the end hoops configured to have greater radial and longitudinal strength than the hoops therebetween. The Examiner further asserts that the device comprises sinusoidal rings connecting the hoops. Applicants respectfully disagree. The union of the apexes disclosed by Fogarty are not what the present invention claims as described in detail below.

Anticipation exists only if all of the elements of the claimed invention are present in a system or method disclosed, expressly or inherently, in a single prior art reference. Therefore, if it can be shown that there is one difference between the claimed invention and what is disclosed in the single reference, there can be no anticipation.

The present invention, as claimed in amended independent claim 1, is directed to a stent. The stent comprises a plurality of hoops having a plurality of interconnected struts forming a substantially diamond shape configuration, a plurality of sinusoidal rings connecting adjacent hoops to one another, and proximal and distal attachment devices for securing a graft member to the stent. The stent has proximal and distal end hoops that are configured to have greater radial and longitudinal strength than the hoops therebetween. The proximal hoop is flared. The sinusoidal rings being formed from a plurality of alternating struts, wherein a junction of the alternating struts of the sinusoidal rings and a junction of interconnected struts of the plurality of hoops are a common junction. The junction is at the apex of at least one diamond shaped configuration of the hoops and at least one apex of the intersection of alternating struts of the sinusoidal rings. The proximal attachment device is positioned distal of the proximal open-end of the stent such that the proximal open end of the stent is exposed to the body vessel. Both the proximal and distal attachment devices comprise tabs formed from the joining of two struts and have at least two apertures therein. The alternating struts forming the sinusoidal rings are substantially shorter in length than the

plurality of interconnected struts of the plurality of hoops. The plurality of hoops, the plurality of sinusoidal rings and the proximal and distal attachment devices form a unitary structure.

Fogarty fails to disclose or suggest a structure wherein the diamond shaped sections are connected to sinusoidal rings at the apex of at least one diamond and at least one intersection of struts. Fogarty discloses overlapping structures that are not sinusoidal rings nor is the entire structure unitary. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

Claims 1 and 3-5 were rejected as being unpatentable over U.S. Patent Number 6,270,524 to Kim in view of U.S. Patent Number 6,579,314 to Lombardi et al. (Lombardi). Claims 1 and 3-5 were rejected as being unpatentable over U.S. Patent No. 6,231,598 to Berry et al. (Berry) in view of U.S. Patent No. 6,699,277 to Freidberg et al. (Freidberg). These rejections are respectfully traversed.

The MPEP, in section 706.02(j), sets forth the basic criteria that must be met in order to establish a *prima facie* case of obviousness.

"To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. In re Vaeck, 947 F.2d,488,20

USPQ2d 1438 (Fed.Cir. 1991). See MPEP § 2143 - § 2143.03 for decisions pertinent to each of these criteria.”

Section 2143.03 of the MPEP clarifies certain criteria in section 706.02(j).

“To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1074). “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).”

Applicants respectfully submit that the prior art references, whether taken alone or in combination, fail to disclose or suggest all of the claim limitations. The references fail to disclose a stent having a plurality of hoops in a diamond configuration, the proximal hoop is flared, a plurality of sinusoidal rings between the hoops and the alternating struts of the sinusoidal rings are substantially shorter than the struts forming the plurality of hoops, and a distal and proximal attachment means formed as tabs at the junctions of struts, wherein the tabs have at least two apertures. In addition, the proximal end hoop is uncovered by graft material. The junction of the sinusoidal rings and the diamond shaped sections occurs at the apex of at least one diamond and the apex of at least one intersection of alternating struts of the sinusoidal ring. None of the references, whether taken alone or in combination discloses or suggests a unitary structure wherein a sinusoidal ring resides between each hoop component or claimed. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

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The amendment raises no new issues and places the application in condition for allowance. Therefore, entry is proper and earnestly solicited.

A favorable Action is respectfully requested.

Respectfully submitted,

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